IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9243 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHAILESHBHAI THAKORBHAI THAKKAR

Versus

STATE OF GUJARAT

Appearance:

MS SUMAN PAHWA FOR MR ASHISH M DAGLI for Petitioner

MR AJ DESAI ASSTT GOVT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 02/02/2000

ORAL JUDGEMENT

#. Heard learned advocate Ms.Suman Pahwa, for learned advocate on behalf of the petitioner and Mr.A.J.Desai, learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 31-5-99 passed by

respondent No.2 - The Police Commissioner, Vadodara against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at running page 18 to 23 interalia indicate that in all 16 criminal cases are registered against the petitioner in between March, 1998 to May, 1998 at different police stations for the offences made punishable under Sections 379, 447, 392 read with Section 114 of IPC etc. That all the cases are pending for investigation. Over and above, that three witnesses have given their statement on 14-5-99 regarding the anti social activities of the petitioner and have referred to incidents alleged to have occurred on 25-2-99, 16-3-99 and 21-3-99 respectively. That on the basis of the said material, the respondent No. 2 as the detaining authority has come to the conclusion that the petitioner / detenu is a dangerous person within the meaning of Section 2(c) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that the impugned order is bad in law on account of the non application of mind inasmuch as the detaining authority has failed to consider that the petitioner was in judicial custody on the date of passing of the order. That earlier on 28-5-99 and 24-5-99 the petitioner was released on bail in respect to criminal case No : 253 / 98 and 13/99 registered at Fateganj police station respectively. However, at no point of time, any attempt has been made to claim cancellation of bail before passing the impugned order. That such non application of mind has vitiated the subjective satisfaction and has rendered the impugned order invalid.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the

subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. In the instant case, on scrutiny of papers, it appears from para 6 of the grounds of detention that the detaining authority has observed that the detenu has been released on bail in respect to C.R. No : 13 of 1999 and 253 / 98, while he is in judicial custody but at any time, the detenu could apply for bail and having got himself released on bail, might indulge into anti social activities. The said observation itself suggests that the detaining authority has based the impugned order on apprehension rather than the fact and has failed to consider the aspect of claiming cancellation of bail under Section 437(5) of CrPC though available. Under these circumstances, the order having been illegal on account of said non application of mind, it is difficult to uphold the same.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 31-5-99 passed by respondent No. 2 - The Police Commissioner, Vadodara against the petitioner is hereby quashed and set aside. The petitioner - SHAILESHBHAI THAKORBHAI THAKKAR is ordered to be set at liberty forthwith, if not required in any other case. Rule to the aforesaid extent is made absolute.

Date : 2-2-2000 [A.K.Trivedi, J.]

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